STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1426

State of Minnesota,
Respondent,

vs.

Colton Tyler Boettcher,
Appellant

Filed May 14, 2018
Affirmed
Stauber, Judge[*]

St. Louis County District Court
File No. 69DU-CR-16-805

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Victoria D. Wanta, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Stauber, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant Colton Tyler Boettcher was convicted of second-degree burglary and ordered to pay restitution for property destroyed in a fire that was started during the burglary. He argues that because he was not convicted of the arson charges brought against him, he should not be made to pay restitution for the property. Because the destruction of the property was directly caused by the burglary, we affirm.

FACTS

In the early morning hours of December 13, 2014, Sergeant Brandon Silgjord of the St. Louis County Sheriff's Office was called to investigate a suspected cabin burglary. Later in the morning, Sergeant Silgjord pulled over appellant, Colton Boettcher, Tyler Klennert and Brody Dunham, suspecting that they were the ones responsible for the burglary. Klennert and Dunham admitted to Sergeant Silgjord that they had committed four burglaries that night. The three were later convicted of the burglaries.

On April 10, 2015, Z.D. and his family went to their land in St. Louis County, after not having visited it for several months. When they arrived, they found that their cabin and the camper parked next to it had been destroyed by a fire. They also noticed that their generator was missing. They contacted the police, and Sergeant Silgjord responded to the call. The family had two trail cameras on their land that were operational during the months they were away. The cameras had taken pictures on December 13, 2014—the same night as the other cabin burglaries—that showed people coming onto their land in a truck, entering the cabin, and leaving as the cabin began burning. Z.D. turned the pictures over to

the police. Sergeant Silgjard examined the pictures and noticed that the truck that came onto the land that night had a distinct headlight pattern. This caused Sergeant Silgjord to remember the prior burglary case he had worked on involving Boettcher, Klennert, and Dunham and that Boettcher's truck had the same distinct headlight pattern as the truck in the pictures. Sergeant Silgjord also realized that the description of Z.D.'s generator matched that of one of the generators recovered from the December 13 burglaries.

Boettcher, Klennert, and Dunham were all charged in the burglary and destruction of Z.D.'s family cabin and camper. Klennert and Dunham pleaded guilty to burglary and aiding an offender with arson. Boettcher went to trial on one count of first-degree arson for the cabin, one count of second-degree arson for the camper, and one count of second-degree burglary. Klennert and Dunham testified at Boettcher's trial, explaining that they went to the cabin planning to burglarize it and that Boettcher was the one who started the fire.

Before the conclusion of the trial, the state dismissed the second-degree arson charge for the camper. The jury found Boettcher guilty of second-degree burglary, but was unable to agree on a verdict on the first-degree arson charge for the cabin, and the state decided not to retry the charge. The district court ordered restitution, concluding that Boettcher should be jointly and severally liable with Klennert and Dunham, in the amount of $81,931.79, for the losses caused by the fire. This appeal follows.

D E C I S I O N

We begin by examining whether Boettcher's challenge of the restitution award was procedurally flawed, and then address the substantive merits of the challenge.

I. Procedural Flaw

We start with a comment made by the district court in its order for restitution. Though it decided Boettcher's challenge to restitution on its merits, the district court stated that the challenge was procedurally flawed because it did not include a sworn affidavit. "We review a district court's application of the law de novo." *Harlow v. State, Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016). The statute governing the procedure for restitution orders indeed requires that an offender wishing to challenge the amount of restitution must include a sworn affidavit explaining why the restitution award should be different from what was requested by the victims. Minn. Stat. § 611A.045, subd. 3(a) (2016). But the affidavit requirement does not "apply when the dispute is over the court's legal authority to order restitution." *State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011). Boettcher does not dispute the value of the cabin and camper. Rather, he argues that because he was not convicted of arson, the district court was not allowed to order restitution for the property. This is the kind of challenge contemplated in *Gaiovnik*, so we conclude that Boettcher's challenge was not procedurally flawed.

II. Restitution

We now turn to the merits of Boettcher's challenge to the district court's restitution order. An order for restitution is reviewed for an abuse of discretion, "[b]ut determining whether an item meets the statutory requirements for restitution is a question of law that is

fully reviewable by the appellate court." *State v. Nelson*, 796 N.W.2d 343, 346-47 (Minn. App. 2011) (quotation omitted).[1]

Boettcher argues that the district court should be precluded from ordering restitution for the cabin and camper because he was not convicted of the associated arson charges. "A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent." Minn. Stat. § 611A.04, subd. 1(a) (2016). "[A] loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted." *Nelson*, 796 N.W.2d at 347 (quotation omitted). And a district court "may not order restitution for conduct that is only tangentially related to the criminal act that caused the loss." *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014), *review denied* (Minn. Apr. 15, 2014). When there is a dispute over the amount or type of restitution, the burden falls on the prosecution to prove the award's appropriateness by a preponderance of the evidence. *See* Minn. Stat. § 611A.045, subd. 3(a).

The district court relied on *State v. Olson* to show that it could order restitution, despite the fact that Boettcher was not convicted of arson. 381 N.W.2d 899 (Minn. App. 1986). In *Olson*, the defendant was convicted of burglary for helping two men break into a

[1] Considering his previous procedural argument, Boettcher's challenge of the district court's authority sounds like the kind of question that receives de novo review, but in the cases most analogous to Boettcher's, the abuse of discretion standard has been used. *See State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999); *State v. Esler*, 553 N.W.2d 61, 65 (Minn. App. 1996), *review denied* (Minn. Oct. 15, 1996); *State v. Olson*, 381 N.W.2d 899, 901 (Minn. App. 1986).

bar, but was found not guilty of the theft of money from the bar. *Id.* at 900. The district court ordered that the defendant pay restitution for the theft in addition to the damage caused by the burglary. *Id.* This court affirmed because the victim's losses were "directly caused by [the defendant's] conduct for which he was convicted." *Id.* at 901. The district court in the present case concluded that Boettcher's case was analogous to *Olson* because "[t]he arson was a direct result of the burglary."

But Boettcher argues that *Olson* is distinguishable from his own case. He asserts that in *Olson*, the predicate offense of the burglary was theft and that the purpose of aiding in the burglary was to further that theft. Thus, he argues, since theft was the primary purpose of the burglary, it was the "natural result or consequence" of the burglary, making it appropriate to order restitution for the theft in *Olson*. Boettcher concedes that he could be ordered to pay restitution for the objects stolen from the cabin because the predicate offense of his burglary conviction was theft. But he asserts that, since arson was not the predicate offense or underlying purpose of the burglary, the destruction of the cabin and camper by fire was not a natural result of the burglary and, therefore, he cannot be made to pay restitution for the cabin and camper.

While Boettcher is correct that his case and *Olson* are somewhat factually distinguishable, the distinctions are not dispositive. Boettcher cites no case (and we know of none) that discusses the relevance of a predicate offense when deciding whether restitution is appropriate. The caselaw instead focuses on whether a loss was directly caused by a crime. *See Miller*, 842 N.W.2d at 477; *Nelson*, 796 N.W.2d at 347; *State v.*

Latimer, 604 N.W.2d 103, 105 (Minn. App. 1999); *State v. Esler*, 553 N.W.2d 61, 65 (Minn. App. 1996); *Olson*, 381 N.W.2d at 901.

Even the cases that Boettcher cites where restitution orders were overturned do not support his predicate-offense theory. In *Esler*, the defendant was convicted of murder, but the district court ordered that he pay restitution for damage done before the murder when he fired a gun at a home as "target practice." 553 N.W.2d at 65. This court overturned the restitution order because the two crimes "were separated by several hours and had different criminal objectives; therefore, they were not parts of the same behavioral incident." *Id.* In *Latimer*, the defendant was ordered to pay restitution for a murder even though she was only convicted of accessory after the fact. 604 N.W.2d at 104. This court overturned the restitution order because the defendant's actions were separate from the murder since she was not present when it happened and only became involved after the fact. *Id.* at 105. In *Nelson*, the defendant was convicted of thefts that occurred over a two-month timeframe, but the district court ordered that the defendant also pay restitution for thefts that occurred during the six months prior to the thefts for which she was convicted. 796 N.W.2d at 346. This court limited the restitution order to the two-month period of time for which the defendant was convicted. *Id.* at 347-48. *Esler*, *Latimer*, and *Nelson* all resulted in this court overturning or reducing restitution awards, like Boettcher advocates for himself, but they did so by highlighting the importance of the factual relationship between the conviction and the restitution award.

A comment made by this court in *Olson* also fits with the logic of those cases. This court said that if Olson had instead been "acquitted of theft involving a totally separate

entity" it would have been improper to order restitution to the second victim based on his conviction of the burglary of the first victim. 381 N.W.2d at 901. We understand that to be because there would have been no factual relationship between the burglary and the theft. Thus, *Olson*, *Esler*, *Latimer*, and *Nelson* do not lend support to Boettcher's argument that this court should focus on what the predicate offense was for his burglary, but they instead clarify how we determine whether a loss was directly caused by a crime.

That brings us to the question of whether the destruction of the cabin and camper was directly caused by the burglary. There was evidence presented that the fire was started during the burglary, including testimony from Klennert and Dunham, and the trail camera pictures. Like in *Olson* (which affirmed the restitution order)—and unlike in *Esler*, *Latimer*, and *Nelson* (which overturned restitution orders)—this shows that there was a factual relationship in time, victims, and location between the conduct for which restitution is being ordered and the crime of which Boettcher was convicted. Moreover, since the evidence indicates that the fire was started during the burglary, the destruction of the camper and cabin cannot be said to be "only tangentially related" to the burglary. *See Miller*, 842 N.W.2d at 477. Because the burglary and the fire are so factually intertwined, we conclude that the district court did not abuse its discretion by ordering restitution.

Affirmed.